

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 05-6052

HEZEKIAH BERNARD DRAYTON,

Petitioner - Appellant,

versus

UNITED STATES OF AMERICA,

Plaintiff - Appellee.

Appeal from the United States District Court for the District of South Carolina, at Charleston. Patrick Michael Duffy, District Judge. (CA-03-3554)

Submitted: March 10, 2005

Decided: March 15, 2005

Before LUTTIG, MOTZ, and TRAXLER, Circuit Judges.

Affirmed by unpublished per curiam opinion.

Hezekiah Bernard Drayton, Appellant Pro Se. William Kenneth Witherspoon, OFFICE OF THE UNITED STATES ATTORNEY, Columbia, South Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit. See Local Rule 36(c).

PER CURIAM:

Hezekiah B. Drayton appeals from the district court's order denying his second motion for leave to file a petition for a certificate of appealability out of time. The district court previously denied relief on Drayton's motion filed under 28 U.S.C. § 2255 (2000) and granted Drayton's first motion for a thirty-day extension in which to note an appeal or request a certificate of appealability.

The time in which to note an appeal is mandatory and jurisdictional. See Browder v. Dir., Dep't of Corr., 434 U.S. 257, 264 (1978) (stating the appeal periods established by Rule 4 are mandatory and jurisdictional). Drayton had sixty days in which to note an appeal from the district court's order entered on May 12, 2004, and the court granted an extension of an additional thirty days. See Fed. R. App. P. 4(a)(1)(B). Drayton did not note an appeal or request a certificate of appealability within that time period.* Moreover, his second request for an extension of time in November 2004 was made outside the time permitted under Fed. R. App. P. 4(a)(5)(A). Accordingly, the district court did not err in denying Drayton an additional extension, and we affirm the district court's order. Drayton v. United States, CA-03-3554 (D.S.C. Dec. 2, 2004). We dispense with oral argument because the facts and

*To the extent that Drayton seeks to appeal the district court's May 12, 2004 order, his notice of appeal is untimely.

legal materials are adequately presented in the materials before the court and argument would not aid the decisional process.

AFFIRMED